

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

MAR 09 2000

Contact Person:

ID Number:

NO PROTEST RECEIVED

Release copies to District Telephone Number:

Date

Surname

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Information provided discloses that you were incorporated on [REDACTED] pursuant to the provisions of [REDACTED] Corporation Acts. You are the successor to a for-profit corporation operated by [REDACTED]. You represent, among other things, that you were organized to provide mental health services for the [REDACTED] population in the [REDACTED] and surrounding areas. To further your purposes, you indicate that the following services are provided:

1. Intensive out-patient; individual psychotherapy
2. Out-patient, group psychotherapy
3. Rehabilitation for drugs, alcohol, gambling etc.
4. Referral networking for in-patient and residential treatment
5. Psychological testing and evaluation

You further indicate that your sources of financial support are and will be proceeds received from other 501(c)(3) organizations, private insurance, private paying clients, state and/or federal grants and Medicaid/Medicare. [REDACTED] and his wife, [REDACTED] are your Clinical Director and Chief Executive Officer, respectively. It appears that at least two of your officers or directors are related to [REDACTED]. The building where some of your services are provided is leased to you by [REDACTED] and you state that two automobiles are leased through [REDACTED] in the [REDACTED] name to transport clients and perform other services. You indicate that since there is not a covered/protected parking area at the clinic, these automobiles are kept at the [REDACTED] residence.

In a letter dated [REDACTED] from the U.S. Department of Health and Human Services, Branch of Contracts and Grants, you were determined to qualify under 48 CFR 3-380.5 as a "Buy Indian" business to provide community health representative services to the Indian Health Service under the Buy Indian Act. This letter also states that ownership in your organization as submitted in your application includes [REDACTED] co-owner; [REDACTED] co-owner; and [REDACTED] co-owner. When your application for exemption from federal income tax was filed [REDACTED] was your President and [REDACTED] was your Sargeant at Arms.

Section 501(c)(3) of the Internal Revenue Code (the Code) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the organization's net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the federal Income Tax Regulations (the Regulations) provides that in order for an organization to be exempt as one described in section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more exempt purposes. Under section 1.501(c)(3)-1(d)(1)(i)(b) of the Regulations, an exempt purpose includes a charitable purpose.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in Code section 501(c)(3) in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second of Trusts), sections 368, 372 (1959); 4A Scott and Fratcher, The Law of Trusts, sections 368, 372 (4th ed. 1989); Rev. Rul. 69-545, 1969-2 C.B. 17.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the Regulations states that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single ... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly ... [exempt] purposes."

Rev. Rul. 69-266, 1969-1 C.B. 151, holds that an organization formed and controlled by a medical doctor to conduct research programs consisting of treating patients who are charged prevailing fees for services rendered is not exempt under section 501(c)(3) of the Code.

Rev. Rul. 76-441, 1976-2 C.B. 147, holds that conversion of a for-profit school to a nonprofit school will not disqualify the nonprofit school for exemption even though the former owners are employed by the nonprofit school. The result depends partly on the fact that the directors of the nonprofit school are not related to the former owners.

It is unclear from the materials that you have submitted that your actual operations are any different from those of your for-profit predecessor. [REDACTED] continue to have personal use of vehicles leased in their names that you represent are used to further your exempt purposes and at least one building that you indicate is used to perform some of your services is also leased from [REDACTED]. Additionally, it appears that your operations benefit [REDACTED] by relieving them of the need to pay the mortgage on their office building, car payments, and providing [REDACTED] with a salary. Finally, two of your board members appear to be related to [REDACTED]. You have failed to meet your burden of establishing that you are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code and you are operated in a manner similar to the organization described in Rev. Rul. 69-266, *supra*. Therefore, we have concluded that you have a substantial nonexempt purpose of engaging in ordinary commercial operations for the private benefit of

[REDACTED]

[REDACTED] Your activities violate the prohibition against private inurement.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EO:RA:T:1, RM. 6514
1111 Constitution Ave. N.W.
Washington, D.C. 20224
If you wish to FAX materials to us, our FAX number is [REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1